BLANK PAGE

IN THE

Supreme Court of the United States

October Term, 1940

No. 384

HOWARD E. BREISCH,
Petitioner.

vs.

CENTRAL RAILROAD OF NEW JERSEY,
Respondent.

BRIEF FOR RESPONDENT

HENRY B. FRIEDMAN,
GEORGE W. AUBREY,
Attorneys for Respondent.

605 Commonwealth Building,
Allentown, Pa.

Murrelle Printing Company, Law Printers, Sayre, Pa.
Joseph T. McFadden, Lehigh County Representative, Allentown, Pa

INDEX TO BRIEF

Table of Cases Cited

Miscellaneous

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1940

No. 384

HOWARD E. BREISCH,
Petitioner.

v.

CENTRAL RAILROAD OF NEW JERSEY,
Respondent.

BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Third Circuit (R. 110) is reported in 112 F. (2) 595, and the opinion of the District Trial Judge will be found on page 99 of the Record.

JURISDICTION

The jurisdiction of this Court arises under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and this Court's grant of a Writ of Certiorari herein on October 21, 1940.

STATEMENT OF THE CASE

Howard E. Breisch, the petitioner, brought an action in trespass against The Central Railroad Company of New Jersey, respondent herein, for injuries sustained by him while working for the respondent company in the yard of the American Steel and Wire Company in Allentown, Pennsylvania, on December 31, 1936.

Petitioner contended that the crew to which he had been assigned, while in the act of shifting the freight car from which he fell, negligently caused the car to run away from its engine, and, that the respondent company permitted the petitioner, its employee, to handle a freight car with a defective hand brake and coupler, contrary to the provisions of the Federal Safety Appliance Acts.

The respondent company contended, among other things, that any remedy which the petitioner might have in the matter was entirely controlled by and relegated to the Pennsylvania Workmen's Compensation Act of 1915, which was in full force and effect at the time of the accident.

Although at the trial of the case, for the purpose of bringing himself within the provisions of the Federal Employer's Liability Act, petitioner strenuously endeavored to prove (R. 14 to 18) that he was injured while engaged in interstate commerce or transportation, not only did petitioner utterly fail to prove same, but on the other hand it was clearly and definitely established, and the Trial Judge so held, that neither petitioner nor respondent were engaged in interstate commerce or transportation at the time of the accident (R. 93).

The Trial Judge allowed the case to go to the jury principally upon the question of damages, with a point of law reserved as to the applicability of the Pennsylvania

Workmen's Compensation Act, and the jury rendered a verdict in favor of petitioner in the sum of $12,000.00.

After argument upon the reserved point of law, and upon respondent's motion for judgment on the whole record, the Trial Judge directed the entry of judgment in favor of petitioner and against respondent.

Upon appeal to the Circuit Court of Appeals for the Third Circuit, respondent's contention that petitioner's remedy was exclusively under the Pennsylvania Workmen's Compensation Act was upheld, and the judgment of the District Court was reversed.

ARGUMENT

Petitioner's Sole and Exclusive Remedy Is under the Pennsylvania Workmen's Compensation Act

Inasmuch as petitioner completely failed in his effort to establish at the trial of this cause that either he or respondent company was engaged in interstate commerce or transportation at the time of the accident, his action cannot be maintained under the Federal Employers' Liability Act, and the only question remaining in this case is whether or not petitioner's remedy is confined solely and exclusively to the Pennsylvania Workmen's Compensation Act or whether he can maintain an action at Common Law.

The Pennsylvania Workmen's Compensation Act of 1915, P. L. 736, which was in full force and effect at the time of the accident herein complained of, provides as follows:

> "Section 302. (a) In every contract of hiring made after December thirty-first, one thousand nine hundred and fifteen, and in every contract of hiring renewed or extended by mutual consent, expressed or implied, after said date, *it shall be conclusively presumed that the parties have accepted the provisions of article three of this act, and have agreed to be bound thereby,* unless there be, at the time of the making, renewal, or extension of such contract, an express statement in writing, from either party to the other, that the provisions of article three of this act are not intended to apply, and unless a true copy of such written statement, accompanied by proof of service thereof upon the other party, setting forth under oath or affirmation the time, place, and manner of such

service, be filed with the Bureau within ten days after such service and before any accident has occurred. Every contract of hiring, oral, written, or implied from circumstances, now in operation, or made or implied on or before December thirty-first, one thousand nine hundred and fifteen, shall be conclusively presumed to continue subject to the provisions of article three hereof, unless either party shall, on or before said date, in writing, have notified the other party to such contract that the provisions of article three hereof are not intended to apply, and unless there shall be filed with the Bureau a true copy of such notice, together with proof of service, within the time and in the manner hereinabove prescribed."

"Section 303. Such agreement shall constitute an acceptance of all the provisions of article three of this act, and *shall operate as a surrender* by the parties thereto of their rights to any form or amount of compensation or damages for any injury or death occurring in the course of the employment, or *to any method of determination* thereof, *other than as provided in* article three of *this act.*"

On the general question as to the rights of an injured employee to maintain a Common Law action for damages, the Supreme Court of Pennsylvania has clearly and definitely enunciated and re-enunciated the principle that he cannot do so and that the Pennsylvania Workmen's Compensation Act provides the sole and exclusive method of securing compensation for injuries sustained.

See: *Venezia, Appellant v. Phila. Elec. Co.*, 317 Pa. 557 (decided February 4, 1935):

By the Court (page 558):

"Was plaintiff an employee of defendant when he was injured on June 2, 1931? The trial judge held that he was and that *he therefore could not maintain*

this common-law action for damages, and accordingly entered a nonsuit, which the court in banc refused to take off. Plaintiff appealed."

"Plaintiff's own testimony shows conclusively that he was a servant and therefore an employee of defendant, and *the court below therefore acted properly in entering a nonsuit on the ground that he could not maintain an action of trespass for his injury, his sole remedy being that provided by the Workmen's Compensation Act*" (page 560). "Judgment affirmed." (Italics ours)

Although the general law of the State of Pennsylvania is as above set forth, petitioner contends that his case does not come within the purview of the Pennsylvania Workmen's Compensation Act, and to support this position cites the cases of *Sims v. Pennsylvania Railroad Company,* 279 Pa. 111, and *Miller v. Reading Company,* 292 Pa. 44.

As to the case of Sims v. Pennsylvania Railroad Company (*supra*), respondent respectfully submits that consideration thereof is unimportant and not helpful to the case presently under consideration, for the reason that in the Sims case no question concerning the Pennsylvania Workmen's Compensation Act was raised or touched upon.

As to the case of Miller v. Reading Company (*supra*), respondent contends that the most that can be said for it is that it is an erroneous effort to interpret a Federal Statute, and this view was concurred in by the Circuit Court of Appeals for the Third Circuit in deciding the case at bar. In this connection the Circuit Court said (R. 116):

"In the light of the foregoing we must conclude that the Supreme Court of Pennsylvania reached the conclusion that the Compensation Act did not apply

to Miller's case, not as a matter of the statutory construction of that Act but because it thought that the proper construction of the Federal Safety Appliance Acts required the ruling that Miller had a cause of action under the Safety Appliance Acts, cognizable in a court of law but not within the purview of the Compensation Law. *'The conclusion reached by the Supreme Court of Pennsylvania constitutes an erroneous construction of federal statutes and is not binding upon us.* (Italics ours). The remedy of the appellee lies solely in the Pennsylvania Workmen's Compensation Act and was not cognizable in an action at law.''

The correctness of this finding by the Circuit Court of Appeals will be apparent by an analysis of the Miller case (*supra*) together with a reference to the opinion of Your Honorable Court in the case of *Tipton v. Atchison, Topeka and Santa Fe Railroad Company,* 298 U. S. 141, which closely followed the somewhat similar decision of *Gilvary v. Cuyahoga Valley Railroad Company,* 292 U. S. 57.

We will first refer to the Tipton case (*supra*), which is the last word of Your Honorable Court on this subject and which is almost identical with the case at bar.

In the said case of *Tipton v. Atchison, Topeka and Santa Fe Railroad Company,* 298 U. S. 141, the petitioner brought an action in California against the respondent to recover for injuries sustained by him in the course of employment as a switchman. The injury was caused by a defective coupling upon a freight car.

The Circuit Court of Appeals for the Ninth Circuit held, that as the petitioner, when injured, was not engaged in interstate commerce he could ask redress only under the California Workmen's Compensation Act, and when the petitioner sought review by Your Honorable Court on the ground that the decision conflicted with the adjudication

of the California Courts sustaining the right to obtain an action for damages in like circumstances, Your Honorable Court held that the Circuit Court of Appeals committed no error in construing the Workmen's Compensation Act as affording the only remedy available to the petitioner.

And in the Tipton case (*supra*), there had been cited two decisions by the courts of California to the effect that the plaintiff could bring an action for damages in the local courts, under similar circumstances, and despite the said Workmen's Compensation Law, and while neither of these cases were appellate cases, they, nevertheless, had both been appealed to the highest court of appeals in California and certioraries were denied. In this connection Your Honorable Court said:

> "If we were convinced that the court acted solely upon a construction of the workmen's compensation law, uninfluenced by the decisions following the supposed authority of the Rigsby case, we should not hesitate to hold United States Courts bound by such construction of the State Statute. But the terms of the state compensation law, and the California decisions construing it, lead us to doubt that it is so" (page 152).

> "We are of opinion the Circuit Court of Appeals committed no error in construing *the Workmen's Compensation Act as affording the only remedy available to the petitioner*" (page 155). (Italics ours.)

See also: *Gilvary v. Cuyahoga Valley Railway Co.*, 292 U. S. 57. In this case there was an action brought by a railroad employee against his employer for personal injuries alleged to have been caused by the railroad's failure to comply with the Federal Safety Appliance Acts. The railroad set up as a defense a mutual election to be bound by the State Compensation Act, but the lower court held that such an agreement was not sufficient to constitute a

defense, being repugnant to the Federal Safety Appliance Acts, and the trial resulted in a verdict and judgment for the employee. The Ohio Court of Appeals reversed this judgment and gave final judgment in favor of the railroad, holding that the election to be bound by the Workmen's Compensation Act was a complete bar to any other right of recovery, and Your Honorable Court in affirming this ruling, said (page 61):

> "Petitioner cites language in Texas & P. R. Co. v. Rigsby, 241 U. S. 33, 41, 60 L. ed. 874, 878, 36 S. Ct. 482. But that case is not in point on the question under consideration in this case. There we were called upon to decide whether a railroad employee engaged in intrastate commerce upon the line of an interstate carrier was within the protection of the Safety Appliance Acts. We held that he was. The opinion supports our recent construction of these Acts that, while they prescribe the duty, the right to recover damages sustained by the injured employee through the breach 'sprang from the principle of the common law,' and was left to be enforced accordingly, or in case of death 'according to the applicable statute.' Moore v. Chesapeake & O. R. Co., 291 U. S. 205, ante, 755, 54 S. Ct. 402, supra; Minneapolis & St. P. R. Co. v. Popplar, 237 U. S. 369, 372, 59 L. ed. 1000, 1001, 35 S. Ct. 609. These Acts do not create, prescribe the measure or govern the enforcement of, the liability arising from the breach. *They do not extend to the field occupied by the state compensation act.* There is nothing in the agreement repugnant to them." Affirmed (Italics ours.)

See also *Gerathy v. Lehigh Valley Railroad*, 83 Fed. (2nd) 738, which was decided in 1938 by the Circuit Court of Appeals for the Second Circuit, and which held as follows:

"This action is for damages due to negligent acts resulting in the death of appellee's intestate. Appellant was charged with violation of the Federal Employers' Liability Act and the Federal Safety Appliance Acts . . . . . Since the appellee's intestate was not engaged in interstate commerce and could recover only for a violation of the Safety Appliance Act, and *since nothing in the Safety Appliance Act forbids the application of the New Jersey Workmen's Compensation Law, that law affords the only remedy available to appellee and precludes a recovery in this action.*" Judgment reversed. (Italics ours.)

The Pennsylvania Case of Miller v. Reading Railroad Company (supra), Relied on by Petitioner, Constituted an Erroneous Construction of a Federal Statute

---

Prior to the Tipton and Gilvary cases (*supra*), a number of courts apparently missed the real point in the case of *Texas & P. R. Co. v. Rigsby*, 241 U. S. 33, and wrongly interpreted that decision to deny to a State the right to substitute Workmen's Compensation for a common-law action for damages which could have been recovered for a violation of the Safety Appliance Acts.

In this category is the Pennsylvania case of *Miller v. Reading Company*, 292 Pa. 44, and in this connection Your Honorable Court, in the Tipton case (*supra*), said (page 147):

"As respects an injury occurring during the course of employment in intrastate activities on a highway of interstate commerce, the question has arisen whether a state may substitute workmen's compensation for the common law or statutory action whereby damages could have been recovered for violation of the Safety

Appliance Acts. A number of courts have interpreted the discussion in the Rigsby Case as a denial of the power of the states to make the substitution (and here, in a foot-note, Your Honorable Court refers to the Miller case among others)."

"This court has recently reaffirmed the principle that the Safety Appliance Acts do not give a right of action for their breach but leave the genesis and regulation of such action to the law of the states."

To further demonstrate the inapplicability of the Miller case (*supra*) we will refer to another and similar Pennsylvania Supreme Court Case which was decided just about two years prior to the Miller case, viz., *McMahan v. Montour Railroad Co.*, 283 Pa. 274.

In the McMahan case, wherein plaintiff sought to recover damages for a violation of the Safety Appliance Acts, the Supreme Court of Pennsylvania said (page 276):

"We agree with the court below that the facts proved do not bring plaintiff within the act relied on, and it did not err in denying a right to recover in the present action. As said by the court below, '*The State of Pennsylvania has made ample provision for employees, who are injured in the course of their employment, in what is known as the Workmen's Compensation Act; to the tribunal provided in that statute the plaintiff in this case has recourse, and, in our opinion, to it alone*'." (Italics ours.)

However, Your Honorable Court subsequently reversed the Supreme Court of Pennsylvania in the McMahan case (See 270 U. S. 628) not on account of its application of the Workmen's Compensation Act, but for the reason that it had also held that the provisions of the Safety Appliance Acts were inapplicable to railroad cars used in intrastate operations of the railroad even though the railroad was a highway of interstate commerce.

As was stated by Your Honorable Court in the Tipton case (*supra*), the Pennsylvania Supreme Court also apparently missed the real reason for the reversal in the McMahan case, and in a comparatively short time thereafter when called upon to decide the similar case of Miller v. Reading Co. (*supra*), the Supreme Court of Pennsylvania changed the position it had taken in the McMahan case, clearly because it was influenced not only by its misunderstanding of Your Honorable Court's decision in the Montour case, but by a misunderstanding of the decision in the Rigsby case as well.

In this connection, as was said by Your Honorable Court, in the Tipton case (page 148):

> "In McMahan v. Montour R. Co., 270 U. S. 628, cited by petitioner, the judgment of the state court was reversed, *not because that court had held that the remedy for breach of duty imposed by the Safety Appliance Acts was afforded by the state workmen's compensation law*, but because of its erroneous decision that the Federal Acts were inapplicable to the cars used in intrastate operation of the railroad, although it was a highway of interstate commerce." (Italics ours.)

Moreover, in the Miller case (*supra*) the Supreme Court of Pennsylvania cites and quotes with approval an opinion by the United States Circuit Court of Appeals for the Second Circuit in the case of *Director General v. Ronald*, 265 Fed. 138.

As matter of fact, this case of Director General v. Ronald (*supra*) is one of the cases mentioned by Your Honorable Court in the Tipton case as having misunderstood the Rigsby decision, and the same United States Circuit Court of Appeals for the Second Circuit subsequently corrected its erroneous position by its opinion in the more recent case of *Geraghty v. Lehigh Valley Railroad*, 83 Fed. (2nd) 738, as hereinbefore quoted.

In the Miller case (*supra*), the Supreme Court of Pennsylvania, quoting from the case of Director General v. Ronald, said (page 49):

> "Bound as we are by the pronouncement there (in the Ross Case) and the reasons therefor, as expressed by the Supreme Court (Texas & Pacific Ry. Co. v. Rigsby, 241 U. S. 33), and more recently adhered to by the denial of the writ in the Ross Case, I conclude that plaintiff below may recover here, irrespective of his engagement in interstate commerce * * * Liability is expressed and fixed by the statute itself, and is to be found therein. That federal act takes precedence over the State Workmen's Compensation Act."

The Supreme Court of Pennsylvania in the Miller case (*supra*) then went on to say (page 50):

> "*The Act of Congress gave to the employee rights not granted under state laws*, and our courts have frequently sustained proceedings based on the federal statute in question (Sims v. P. R. R. Co., supra, and cases there cited) and the exercise of this jurisdiction has been approved on appeal to the United States Supreme Court: McMahan v. Montour R. R. Co., supra." (Italics ours.)

But in the Tipton case (*supra*), which is the last word on the subject, we again call attention to the fact that Your Honorable Court said (page 147):

> "This court has recently reaffirmed the principle that *the Safety Appliance Acts do not give a right of action for their breach*, but leave the genesis and regulations of such action to the law of the states." (Italics ours.)

And in the Gilvary case (*supra*) Your Honorable Court said (page 61):

> "*These acts do not create,* prescribe the measure, or govern the enforcement of, *liability arising from the breach. They do not extend to the field occupied by the State Compensation Act.*" (Italics ours.)

Therefore, the best that can be said for the Miller case (*supra*) is that like the Ballard and Walton cases referred to in the Tipton case (*supra*), *it is an erroneous effort to interpret a Federal Statute* and attempts to set up a new right and liability where no new right and liability is created, and all of which is directly contrary to the decisions of Your Honorable Court as expressed in the Tipton and Gilvary cases (*supra*).

In the dissenting opinion filed in the case at bar by the Honorable Circuit Court Judge Jones, he concedes therein (R. 121) that where a state court acts upon a mistaken notion as to a federal statute, the state decision is not binding on the Federal Court and, in his opinion goes on to say (R. 126):

> "It is true, as the majority of this court point out, the opinion of the Pennsylvania Supreme Court in the Miller case contains statements which indicate that that court thought that the Federal Safety Appliance Acts imply an employee's right of action for their breach which it is the duty of the states to supply or recognize by way of an action at law for damages."

But, unlike the majority opinion, nowhere does he seem to have taken into consideration the misconception that the Pennsylvania Supreme Court had as to the reason for its reversal by Your Honorable Court in the McMahan case (*supra*) which, together with its misapplication of the Rigsby, Ronald and Ross cases, directly lead it into the subsequent misconstruction of the Federal Safety Appliance Act in the Miller case (*supra*), and that therefore the Miller case should not prevail.

Respondent respectfully submits that the dissent by Circuit Court Judge Jones is not well taken, and is not only directly in conflict with the opinions of Your Honorable Court in the Tipton and Gilvary cases (*supra*), but is also fully and completely answered by the recent opinion of Your Honorable Court in the case of *State Tax Commission v. Van Cott*, 306 U. S. 511, wherein Your Honorable Court, through Mr. Justice Black, said (p. 154):

> "If the court were only incidentally referring to decisions of this Court in determining the meaning of the state law, and had concluded therefrom that the statute was itself intended to grant exemption to respondent, this Court would have no jurisdiction to review that question. But, if the state court did in fact intend alternatively to base its decision upon the state statute and upon an immunity it thought granted by the Constitution as interpreted by this Court, these two grounds are so interwoven that we are unable to conclude that the judgment rests upon an independent interpretation of the state law. Whatever exemptions the Supreme Court of Utah may find in the terms of this statute, its opinion in the present case only indicates that 'it thought the Federal Constitution (as construed by this Court) required' it to hold respondent not taxable."

In petitioner's brief (page 11), reference is made to the opinion of the District Court Judge who originally tried the case under consideration.

An examination of that opinion (R. 99) will clearly disclose that it was not predicated upon any decision of a Pennsylvania Court, but oddly enough upon the unwarranted conclusion that the Pennsylvania Workmen's Compensation Act was not applicable for the reason that the contract of hiring *might have been* entered into outside of the State of Pennsylvania.

We quote from that part of the Trial Judge's opinion which, aside from a discussion of the case, includes practically his entire finding (R. 104):

> "For ought we know, the contract of employment was made outside of Pennsylvania whose Statutes were unthought of and not binding upon the parties, and the plaintiff had no right to compensation. The Miller case is decisive of this."

> "We hold that the provisions of the Act do not apply to parties whose contract of employment was entered into outside of the State of Pennsylvania and who have not agreed to pay and accept compensation. The plaintiff does not lose his right of action except only as he has agreed and has been given a substitute right to the compensation provided by the Act. Here he has no right to compensation."

> "The motion for a new trial and for judgment n. o. v. are both denied, with exception to defendant, and plaintiff may enter judgment on the verdict, with costs."

On this point, Section 1 of the Pennsylvania Workmen's Compensation Act of 1915, P. L. 736, itself provides:

> "Section 1. Be it enacted, &c., That this act shall be called and cited as The Workmen's Compensation Act of 1915, and *shall apply to all accidents occurring within this Commonwealth, irrespective of the place where the contract of hiring was made,* renewed, or extended, and shall not apply to any accident occurring outside of the Commonwealth." (Italics ours.)

Nor was there a scintilla of evidence in the case to show that the contract of employment was made outside of Pennsylvania, and a mere reference to the Bill of Complaint as filed by petitioner (R. 4) or to the Statement of the Case as set forth in the Petitioner's Brief (page 3) will

clearly establish the undisputed fact that the accident did occur in the State of Pennsylvania.

Therefore, the decision of the Trial Judge is patently incorrect and can be of little or no help to the petitioner in this case.

CONCLUSION

In conclusion, respondent respectfully contends that the Circuit Court of Appeals for the Third Circuit was correct in concluding that in the State of Pennsylvania the Pennsylvania Workmen's Compensation Act furnishes the sole and exclusive method of securing compensation for injuries sustained by employees engaged only in intrastate commerce or transportation.

Therefore, and by reason of all of the foregoing, it is respectfully submitted that the decision of the majority of the Circuit Court of Appeals for the Third Circuit should be affirmed, and petitioner's Writ of Certiorari should be dismissed.

Respectfully submitted,
HENRY B. FRIEDMAN,
GEORGE W. AUBREY,
Attorneys for Respondent.

BLANK PAGE

SUPREME COURT OF THE UNITED STATES.

No. 384.—October Term, 1940.

Howard E. Breisch, Petitioner, *vs.* Central Railroad of New Jersey.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[March 3, 1941.]

Mr. Justice Reed delivered the opinion of the Court.

This certiorari brings here the question as to whether the law of Pennsylvania limits recovery under the provisions of the Federal Safety Appliance Acts to the procedure and awards of that state's Workmen's Compensation Act in accidents where the railway employee is engaged in an intrastate activity at the time of injury.

The suit was brought at common law in the Federal District Court for the Eastern District of Pennsylvania on the ground of diversity of citizenship. The employee, petitioner here, was a citizen of Pennsylvania and the defendant was a corporation created under the laws of New Jersey, handling transportation moving between states. The basis of the action was respondent's violation of the Safety Appliance Acts by failure to furnish efficient hand brakes for a car.[1] This failure resulted in an injury to petitioner in Pennsylvania. No interstate commerce was involved. He recovered in the trial court but the judgment was reversed by the Circuit Court of Appeals on its determination that the remedy of the petitioner lay solely in the Compensation Act and was not cognizable at law.[2] We granted certiorari because of an alleged conflict on a question of local law between the judgment below and *Miller* v. *Reading Company*.[3]

No issues arise except the one upon procedure. It is clear that an employee injured in intrastate transportation by defective equipment of an interstate railroad comes under the Safety Appliance

[1] Act of April 14, 1910, § 2, 36 Stat. 298.
[2] 112 F. (2d) 595.
[3] 292 Pa. 44.

Acts.[4] Nor is there any longer a question as to the power of the state to provide whatsoever remedy it may choose for breaches of the Safety Appliance Acts.[5] The federal statutes create the right; the remedy is within the state's discretion. In this case we are to find what remedy the State of Pennsylvania has provided.

This Court had occasion to consider the matter of what remedies for breach of the Federal Safety Appliance Acts had been provided by a state in *Tipton* v. *Atchison, Topeka & Santa Fe Railway Company.*[6] The circumstances there were quite similar to the present case. Tipton was an employee of a railroad which was a highway of interstate commerce and suffered injury through violation of the safety acts while engaged within California in intrastate transportation. He sought damages at common law and, after removal to the federal court, was cast in the litigation on the ground that his only redress lay through the California Workmen's Compensation Act. In affirming this conclusion here, two cases of the district courts of appeal of California were examined—*Ballard* v. *Sacramento Northern Railway Company*[7] and *Walton* v. *Southern Pacific Company.*[8] Petition for review of the two cases had been refused by the Supreme Court of California.[9] The *Ballard* case treated section 6 of the act of April 22, 1908,[10] the jurisdictional section of the Federal Employers Liability Act, as applicable to the cause of action under consideration, although that cause was bottomed upon the Safety Appliance Acts. From that premise the California court went ahead to conclude that its Workmen's Compensation Act did not apply by virtue of section 69(c) of the Compensation Act.[11] That section omitted employments governed by

[4] Texas Pacific Ry. Co. *v.* Rigsby, 241 U. S. 33; Tipton *v.* Atchison Ry. Co., 298 U. S. 141.

[5] Moore *v.* C. & O. Ry. Co., 291 U. S. 205; Gilvary *v.* Cuyahoga Valley Ry. Co., 292 U. S. 57; Tipton *v.* Atchison Ry. Co., *supra* note 4.

[6] 298 U. S. 141.

[7] 126 Cal. App. 486.

[8] 8 Cal. App. (2d) 290.

[9] 126 Cal. App. at 501 and 8 Cal. App. (2d) at 305.

[10] 35 Stat. 66 as amended April 5, 1910, 36 Stat. 291, and March 3, 1911, §291, 36 Stat. 1167. There has been a subsequent amendment immaterial here, Aug. 11, 1939, § 2, 53 Stat. 1404.

[11] Section 69 provided:

"(c) *Employers engaged in interstate commerce.* This act shall not be construed to apply to employers or employments which, according to law, are so engaged in interstate commerce as not to be subject to the legislative power of the state, or to employees injured while they are so engaged, except in so far as this act may be permitted to apply under the provisions of the Constitution of the United States or the acts of Congress."

the acts of Congress. The Compensation Act is the exclusive state remedy for injuries within its scope. The Federal Employers Liability Act does give a right of action and fix the tribunals where it may be enforced.[12] Thus through assimilating the rights and remedies under the Safety Appliance Acts to those under the Federal Employers Liability Act, the California Workmen's Compensation Act was found inapplicable. *Walton's* was a similar case and it too, page 305, following *Ballard*, permitted the maintenance of the suit in the state court.

This Court was of the view that the California courts excluded these railroad employees from the benefits of the Compensation Act "because they [the courts] thought the Safety Appliance Acts required the State to afford a remedy in the nature of an action for damages" and for that reason refused to follow their interpretation of the Compensation Act. Although the *Tipton* case decided the only available California remedy was the compensation scheme, it was indicated that "a definite and authoritative decision" to the contrary by the California courts would, of course, be followed.[13] Tipton lost through the determination here that California had declared by its statute he must seek relief through compensation.

In the present case, Breisch sued at common law. The Circuit Court of Appeals reversed the judgment in his favor on the ground that the Pennsylvania Workmen's Compensation Act supplied the exclusive remedy for his injury. To reach this conclusion, the Court determined that in *Miller* v. *Reading Company*[14] the Supreme Court of Pennsylvania decided that "the Compensation Act did not apply to *Miller's* case, not as a matter of statutory construction of that Act but because it thought that the proper construction of the Federal Safety Appliance Acts required the ruling that Miller had a cause of action under the Safety Appliance Acts, cognizable in a court of law but not within the purview of the Compensation Law." Reliance was placed upon the *Tipton* case and *Red Cross Line* v. *Atlantic Fruit Company*[15] which support the principle that

[12] Moore *v.* C. & O. Ry. Co., 291 U. S. 205, 215, 216, and §1 and §6, 45 U. S. C. 51 and 56.

[13] A later decision of the Supreme Court of California is in accord with this Court's ruling in the Tipton case. Scott *v.* Industrial Accident Comm., 9 Cal. (2d) 315, 323.

[14] 292 Pa. 44.

[15] 264 U. S. 109, 120.

interpretation of state statutes by state courts under compulsion of federal law erroneously understood does not bind federal courts.

It is not apparent to us, however, that the *Miller* opinion depends upon the compulsion of a misunderstanding of the Safety Appliance Acts. In *McMahan* v. *Montour Railroad Company*,[16] it is true, the Supreme Court of Pennsylvania held the Compensation Act was the exclusive remedy for injuries to employees of interstate railroad highways, when the employees at the time of the injury were engaged in an intrastate movement. But that case was predicated upon an erroneous conception of the relation of the employee to interstate commerce. It was thought that only employees who were engaged in that commerce at the time of the accident were covered by the Safety Appliance Acts.[17] Nothing was said as to the tribunal which might award relief in employments covered by the Safety Appliance Acts. This Court's citations on reversal dealt only with the scope of the federal acts, not with remedies under them.[18] When the question next arose, in the *Miller* case, the Pennsylvania court undertook an interpretation of the scope of the coverage of the Workmen's Compensation Act. That act provides in Section 302:

"(a) In every contract of hiring made after December thirty-first, one thousand nine hundred and fifteen, and in every contract of hiring renewed or extended by mutual consent, expressed or implied, after said date, it shall be conclusively presumed that the parties have accepted the provisions of article three of this act, and have agreed to be bound thereby, unless there be . . . ."

(Article three is the compensation schedule.) There are no exceptions to this except the customary exemptions of domestic service or agriculture.[19] In the *Miller* case, compensation coverage was refused employees of interstate roads engaged in intrastate activities in these words:

"Our Workmen's Compensation Act gave to a board exclusive jurisdiction of proceedings to adjudicate claims of employees, which, by consent, express or implied, it was agreed should be so disposed of, and, as to such cases, jurisdiction of the courts to try and determine is ousted. But as to demands, not arising from the ordinary relation of employer and employee, such as the enforce-

16 283 Pa. 274.

17 Tipton *v.* Atchison Ry. Co., 298 U. S. 141, 148.

18 McMahon *v.* Montour Railroad Co., 270 U. S. 628.

19 Pa. Laws 1915, p. 777.

ment of rights fixed by federal statute, their powers remain as if no such state legislation was in force."[20]

Though there undoubtedly were other statements in the course of the opinion which reflect a misconception of the state's authority over procedure for recovery under the Safety Appliance Acts, we conclude that such misconception is not enough to call for a refusal to follow the Supreme Court's definite ruling that the state courts were open for redress for accidents covered by the Safety Appliance Acts.

State Tax Commission v. *Van Cott*,[21] relied upon to support the conclusion reached below, is not controlling. In that case a direct review of the question decided by the state court was sought here on the ground that the state's conclusion on a matter of construction of a state income tax statute was controlled by the decisions of this Court on the taxability by states of salaries of federal employees. It was not clear to us whether the state decision was controlled by the state court's view of our decisions or not. And, as our decisions at the time of review here permitted a decision by the state court on the state statute, free from federal constraint, we returned the case for state action. In the *Van Cott* case we were reviewing an application of federal law by a state court to a solution of a state's problems. Here we have a federal court's interpretation of a long standing state decision. Uncompleted state action, probably influenced by decisions of this Court subsequently overruled, calls for an opportunity for the state to adjudicate the question for itself, while a fixed interpretation of a state statute should be accepted by the federal courts when it does not obviously depend altogether on a misconception of federal law.

There are other factors which forbid the conclusion below. A Pennsylvania statute, derived from the state's common law,[22] provides "That when a court of last resort has construed the language used in a law, the Legislature in subsequent laws on the same subject matter intend the same construction to be placed upon such language."[23] Since the *Miller* case the compensation act has been

[20] 292 Pa. at 50.

[21] 306 U. S. 511.

[22] Buhl's Estate, 300 Pa. 29.

[23] Pa. Laws 1937, Act No. 282, § 52(4).

amended several times,[24] but the Legislature has never attempted to override the limitations read into it by the *Miller* opinion. There were comprehensive amendments in the 1937 reenactment,[25] more than a year after this Court's decision in the *Tipton* case established that the compensation remedy could be made exclusive, but still the Legislature took no action. Under these circumstances we are of the opinion that the interpretation of the Supreme Court of Pennsylvania of its own Workmen's Compensation Act and of the jurisdiction of its courts over claims arising under the Safety Appliance Act is binding upon the federal courts and should be followed.

The judgment of the Circuit Court of Appeals is reversed and that of the District Court is affirmed.

Mr. Justice ROBERTS is of the opinion that the judgment of the Circuit Court of Appeals should be affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

[24] Pa. Laws 1929, Acts No. 311, 358, 361, 372; Laws 1931, Acts No. 151, 205; Laws 1933, Acts No. 68, 324, 328; Laws, Special Session 1933-34, Acts No. 55, 56; Laws 1935, Act No. 412; Laws 1937, Act No. 323.

[25] Pa. Laws 1937, Act No. 323.